

IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No.302/2007.

SMT. SHRIMATI NARAYAN
AMONKAR AND ANR., .. Petitioners.

Versus

FERICEM ENGINEERING
COMPANY PVT.LTD,
REPRESENTED BY DIRECTOR
MR. RAFIK SATTAR CHOWHAN .. Respondent.

Ms. Susan Linhares, Advocate U.L.A.S. for the petitioners.

Mr. A. D. Bhobe, Advocate for the respondents.

Coram :- R. S. MOHITE, J.**Date : - 14th September, 2007.****P.C. :**

This petition impugns an order dated 30.03.2007 passed by Civil Judge, S.D., Mhapusa on an application made by the original defendants for framing additional tenancy issue. The trial Court has refused to frame additional tenancy issue on the ground that the pleading of tenancy is vague. The Court has observed that there is no pleading as to when the said tenancy was created and as to what was the rent paid. The material facts relating to alleged tenancy are not pleaded. The issue is no longer resintegra. It was dealt with by this Court in Pandu Yerudkar and another Versus Ananda Krishna Patil, reported in AIR 1975, Bombay, 52. Wherein this Court has observed in para. 3 as follows.

“ When a vague plea is made by the defendant contending that he is a tenant of the land, the Court should hesitate to frame such an issue on such a vague plea, unless the defendant is able to give particulars showing the time when the tenancy was created, the person by whom it was created and the terms on which it was created. If in spite of such particulars being asked for the defendant is unable to furnish the same, the Court should not raise an issue on a vague plea that he, the defendant, is a tenant of any particular piece of land.”

To similar effect the observations held by this Court in the cases of Thomas Antony Versus Varkey Varkey, reported in 2001, SCC, 35 & Ramu Agalgave and others Vs. Imam Pathan, reported in 1992 (3) B.C.R., 560.

More recently, aforesaid principles have been confirmed by this Court in the case of Ana Praxedes da Piedade Versus Joaquim Filipe Afonso, reported in 2006(5) B.C.R., 51. Though in this case on facts, it was held that plea of tenancy was not vague, in the present case, it is seen that tenancy is claimed from time immemorial. It is not specified in the Written Statement or in the counterclaim as to who had created the tenancy and in whose favour. There is no pleading pertaining to devolution of tenancy. The amount which was paid is not specified. In the counterclaim it is admitted that name of defendants does not find place in the tenancy column but find place in the other rights column. In so far as the name of the defendants stands in other rights column, the defendants have sought declaration relating to their possession and issue in that regard has already been framed. Hence, I find no substance in the petition and no error is found in the order.

Therefore, petition is rejected. Stay is vacated and the parties will appear before the trial Court on 27.09.2007 at 10.00 a.m. Authenticated copies of this order be furnished to the parties.

R. S. MOHITE, J.

SMA